

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 296

[T.D. ATF-423]

RIN 1512-AB95

Floor Stocks Tax for Cigarettes (99R-259P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final Rule (Treasury decision).

SUMMARY: This document implements section 9302 of the Balanced Budget Act of 1997 (Pub. L. 105-33). This document prescribes regulations covering the computation and payment of floor stocks tax on Federally taxpaid or tax determined cigarettes which are held for sale on January 1, 2000 and January 1, 2002. This document also provides regulations for conducting inventories and for maintaining required records associated with the floor stocks tax.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8210, e-mail, alc/tob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

General Requirements

Section 9302(j) of the Balanced Budget Act imposes a floor stocks tax on all cigarettes. This floor stocks tax is to be computed on Federally taxpaid or tax determined large and small cigarettes held for sale on the first moment of January 1, 2000 and January 1, 2002.

The floor stocks tax applies to anyone who holds cigarettes for sale on the tax increase dates. This applies to manufacturers, importers, wholesalers and retailers. The tax applies to cigarettes only; the floor stocks tax does not apply to other tobacco products (including cigars, smokeless tobacco, pipe tobacco, and roll-your-own tobacco) or cigarette papers and tubes. Cigarettes that are in vending machines in accordance with 27 CFR 296.212 on the tax increase dates are not subject to the tax.

Inventory Requirements

Liability for the floor stocks tax is determined on the basis of an inventory of cigarettes held for sale. Each person will be required to

make either a record of the physical inventory or a book or record inventory supported by the appropriate source records. The inventory must be taken sometime between December 26th and January 10th.

The inventory must separately account for any cigarettes held for sale that have been marked for export from the United States. A package of cigarettes marked for export from the United States has been imprinted or has been labeled with the words "Tax-exempt. For use outside U.S." or "U.S. Tax-Exempt. For use outside U.S." or has a stamp, sticker or notice, required by a foreign country or a possession of the United States, which identifies the foreign country or possession. If a person is required to file a return, that person will report the quantities of these export cigarettes separately on the tax return.

ATF believes that the requirements of a separate inventory and a separate reporting of cigarettes on the tax return marked for export are necessary to enforce the provisions of 26 U.S.C. 5761(c). Section 5761(c) of the IRC penalizes persons who sell, reland or receive cigarettes that have been labeled or shipped for export on or after January 1, 2000. We note that any person who has cigarettes with such export markings that are held on the first moment of January 1, 2000, and are tax paid or tax determined may continue to sell these cigarettes without incurring the penalties of section 5761(c).

The requirements to take a separate inventory of cigarettes that have been marked for export from the United States, and if required, a separate report on the tax return, will identify those who hold such cigarettes and the quantities involved. By identifying the quantities of cigarettes that have been marked for export before January 1, 2000, and the persons holding such cigarettes, ATF can more effectively conduct inspections to ensure compliance with the provisions of 26 U.S.C. 5761(c).

Filing Requirements

Any person holding Federally taxpaid or tax determined cigarettes on January 1, 2000 or January 1, 2002 may have to file a tax return and make payment. Each person is allowed a credit of \$500 or the amount of the tax liability, whichever is less. Therefore, a person whose liability is \$500 or less will not be required to file a return. However, all persons must maintain an inventory record establishing that the tax liability is \$500 or less.

Where tax is due, payment in full must accompany the return. For the tax increases on January 1, 2000, and January 1, 2002, persons must file the floor stocks return and pay the floor stocks tax no later than March 31, 2000, or April 1, 2002, respectively.

Delegations

In the sections of the regulations that are affected by this document, we have replaced obsolete ATF titles with the "appropriate ATF officer" and referred to a delegation order that specifies the current title of the ATF official for each activity. The titles of responsible persons in the remaining sections of regulations in this part will be updated by future technical amendments.

Administrative Procedure Act

This document merely implements sections of the law that were

enacted on August 5, 1997. Therefore, we find it is unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) do not apply to this final rule. We were not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. The revenue effects of this rulemaking on small businesses result directly from the underlying statute. Pursuant to 26 U.S.C. 7805(f), we have sent a copy of this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses pursuant to section 7805(f).

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866.

Paperwork Reduction Act of 1995

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection information for OMB number 1512-0504 is found in 27 CFR 296.196 and 296.262. The collection information for OMB number 1512-0141 is found in 27 CFR 296.253. This information is required to ensure proper

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records and payment of floor stocks tax on cigarettes. The collection of information is mandatory for respondents who are primarily businesses or otherwise operate for profit. The estimated average burden of this information collection is 4 hours per respondent for a small business and 12 hours per respondent for a large business. The overall burden of this information collection is estimated at 2 million hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Document Services Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document is Jackie White of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 296

Authority delegations, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

PART 296--[AMENDED]

Paragraph 1. The authority citation for part 296 is revised to read as follows:

Authority: 18 U.S.C. 2341-2346, 26 U.S.C. 5708, 5751, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

Par. 2. Subpart I is revised to read as follows:

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Subpart I--Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

Authority: Section 9302, Pub.L. 105-33, 111 Stat. 251, unless otherwise noted.

General

Sec. 296.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on cigarettes held for sale the first moment on January 1, 2000 and on January 1, 2002.

Sec. 296.192 Terms used in this subpart.

(a) Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this subpart

by ATF Order 1130.14, Delegation Order--Delegation of the Director's Authorities in Subpart I of 27 CFR Part 296.

(b) Controlled group. Pursuant to 26 U.S.C. 5061(e)(3), the term "controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1 (a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Also, the rules for a controlled group of corporations apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

(c) Foreign trade zone. A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(d) Large cigarettes. Cigarettes weighing more than three pounds per thousand.

(e) Person. When the term "person" is used in this subpart, it refers to an individual, partnership, association, company, corporation, a trust, or an estate. It also includes any State or political subdivision.

(f) Small cigarettes. Cigarettes weighing not more than three pounds per thousand.

(g) Tax increase dates. For the purposes of this floor stocks tax, the tax increase dates are January 1, 2000 and January 1, 2002.

Sec. 296.193 Floor stocks tax defined.

Floor stocks tax is a tax imposed on all Federally taxpaid or tax determined cigarettes held for sale on the first moment a tax increase becomes effective. The tax is the difference between the previous excise tax rate and the new tax rate.

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Sec. 296.194 Persons liable for this tax.

You are liable for this tax if you hold for sale any taxpaid or tax determined cigarettes at the moment a tax increase is effective. You are liable for floor stocks tax on cigarettes that you own that may be in transit (refer to Secs. 296.207 and 296.208). You may also be liable if you hold cigarettes in a foreign trade zone (refer to Sec. 296.209).

Sec. 296.195 Persons not liable for this tax.

If you do not hold any taxpaid or tax determined cigarettes for sale at the moment a tax increase is effective, you are not liable for

this tax.

Sec. 296.196 Floor stocks requirements.

(a) Take an inventory. Establish the quantity of cigarettes subject to the floor stocks tax held for sale at the beginning of the tax increase dates (January 1, 2000 and January 1, 2002). You may take a physical inventory or you may use a book or record inventory, as specified in Secs. 296.205 and 296.206.

(b) Compute tax amount. Compute the amount of tax for the cigarettes held for sale at the start of each of the tax increase dates. Refer to the table shown in Sec. 296.222. Apply the tax credit as provided by Sec. 296.223.

(c) File tax return. After you have computed the floor stocks tax, you must file a return for each tax increase date if tax is due.

(d) Maintain records. Maintain all records used to determine the quantity of cigarettes on hand at the start of each tax increase date. You must also maintain all computations used to determine the amount of tax owed. Refer to Sec. 296.241.

(Approved by the Office of Management and Budget under control number 1512-0554)

Inventories

Sec. 296.201 Establish quantities of cigarettes.

You must take an inventory to establish the quantity of cigarettes subject to the floor stocks tax. You may take a physical inventory or a book or record inventory.

Sec. 296.202 Inventory for cigarettes with export markings.

Your inventory of cigarettes must count separately cigarettes that have been labeled for export from the United States.

Sec. 296.203 How to identify cigarettes with export markings.

Each package (the container in which cigarettes are put up by the manufacturer and delivered to the consumer) of cigarettes will have:

(a) A mark or a label with the words "Tax-exempt. For use outside U.S." or "U.S. Tax Exempt. For use outside U.S."; or

(b) A stamp, sticker, or notice, required by a foreign country or possession of the United States, which identifies such country or possession.

Sec. 296.204 When to take inventory.

You must take your physical inventory or book or record inventory during the periods noted in the table to this section.

Date of floor stocks tax	Not earlier than	No later than
January 1, 2000.....	December 26, 1999...	January 10, 2000.
January 1, 2002.....	December 26, 2001...	January 10, 2002.

Sec. 296.205 Physical inventory requirements.

Your physical inventory must include a written record of:

(a) Quantity and Type. You must record the quantity and type of cigarettes in sufficient detail to determine the tax rate as stated in Sec. 296.222 and whether the cigarettes have export markings as stated in Sec. 296.203. The following chart provides the type of cigarette and method to use to determine quantities:

Type or kind	Inventory method
Small cigarettes (Class A)...	Count the: <ul style="list-style-type: none"> &bullet; Number of cigarettes without export markings. &bullet; Number of cigarettes with export markings.
Large cigarettes (Class B)...	Count the: <ul style="list-style-type: none"> &bullet; Number of large cigarettes 6.5" or less in length without export markings. &bullet; Number of large cigarettes 6.5" or less in length with export markings. &bullet; Number of each size of large cigarettes more than 6.5" in length without export markings. &bullet; Number of each size of large cigarettes more than 6.5" in length with export markings.

(b) Date. Date(s) the inventory was taken.

(c) Name. Name of individual(s) conducting the inventory and the name of the person for whom the inventory was taken.

(d) Location. Record where the inventory was taken (street address, city and State).

(e) Time. The physical inventory must be taken between the dates shown in Sec. 296.204. If you do not take the physical inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled. The inventory records must be reconciled to reflect the actual quantity of cigarettes held as of the first moment of January 1, 2000 and January 1, 2002, respectively. These records must include all supporting records of receipt and disposition.

Sec. 296.206 Book or record inventory requirements.

You may use a book or record inventory if you have source records

that show:

- (a) The quantity of receipts and dispositions of all cigarettes.
- (b) The actual type and quantities of cigarettes on hand as if a physical inventory had taken place the moment the tax increase became effective. Refer to Sec. 296.205(a).
- (c) The name and address of the consignor and consignee.
- (d) The date of receipt or disposition of the cigarettes.
- (e) The brand name of each product.
- (f) If you do not take the inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled as described in Sec. 296.205(e).

Sec. 296.207 Cigarettes in transit.

Cigarettes in transit must be included in your inventory if you hold title to the cigarettes. If you have transferred the

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title, you must document the title transfer in writing. For example, you may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

Sec. 296.208 Guidelines to determine title of cigarettes in transit.

You may use the following guidelines to establish who holds title to cigarettes in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the cigarettes.

(1) Freight on board (F.O.B.) destination. The title transfer occurs when the seller completes the performance of the physical delivery of the cigarettes.

(2) Freight on board (F.O.B.) shipping point. The title transfer occurs when the seller transfers the title at the time and place of shipment, which is generally by common carrier.

Sec. 296.209 Cigarettes in a foreign trade zone.

You are liable for the tax and must take an inventory when either of the following conditions apply:

(a) Internal revenue taxes have been determined or Customs duties liquidated, with respect to cigarettes pursuant to the first proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a), or

(b) Cigarettes are held by a Customs officer pursuant to the second proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a).

Sec. 296.210 Cigarettes held in bond.

If you are a manufacturer or an export warehouse proprietor and hold cigarettes in ATF bond on the tax increase dates, the floor stocks tax does not apply to those cigarettes. Likewise, if you have cigarettes held in a Customs bonded warehouse, the floor stocks tax does not apply on those cigarettes.

Sec. 296.211 Unmerchantable cigarettes.

Any cigarettes that you hold for return to a supplier because of some defect are not subject to the floor stocks tax. You must prepare a separate list of these items. You cannot include as unmerchantable any items that may be held because of poor market demand or to reduce your inventory.

Sec. 296.212 Cigarettes in vending machines.

You do not have to inventory cigarettes held in a vending machine for retail sale, provided:

- (a) The vending machine holding the cigarettes is placed at a location where retail sales occur, and
- (b) The cigarettes are ready to be dispensed by a consumer.

Sec. 296.213 Cigarettes marked "not for sale" or "complimentary."

Cigarettes marked "not for sale" or "complimentary" that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included in the book or record inventory as required by Secs. 296.205 and 296.206. Cigarettes that are marked "not for sale" or "complimentary" and are intended to be given away and not in conjunction with any sale are not subject to the floor stocks tax.

Compute Tax Liability

Sec. 296.221 Determine amount of tax due.

After you have taken your inventory, apply the applicable tax rate for each type of cigarette using the table in Sec. 296.222. Multiply the amount of each type of cigarette by the applicable tax rate.

Sec. 296.222 Floor stocks tax rates.

Type or kind	January 1, 2000	January 1, 2002
Small Cigarettes (3 pounds or less per 1,000).	\$5 per 1,000 or 10 cents per 20.	\$2.50 per 1,000 or 5 cents per 20
Large Cigarettes (more than 3 pounds per 1,000).	\$10.50 per 1,000 or 21 cents per	\$5.25 per 1,000 or 10.5 cents per 20

Special rule: For large cigarettes over 6\1/2\ inches long determine the rate for each length. Multiply the rate prescribed for small cigarettes by the whole number that represents the addition of each 2\3/4\ inches and any fraction of the length, as one (1).

Sec. 296.223 Apply tax credit.

You are allowed a credit against your floor stocks tax of up to \$500. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

Filing Requirements

Sec. 296.231 How to obtain a tax return.

You may obtain ATF Form 5000.28T, Floor Stocks Tax Return for Cigarettes, from any of the following sources:

- (a) ATF web site (www.atf.treas.gov);
- (b) ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or
- (c) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

Sec. 296.232 Prepare tax return.

If your tax liability is zero, you do not have to complete or file a tax return. Otherwise, complete and file the floor stocks tax return in accordance with the instructions for the form.

Sec. 296.233 How to pay.

Your payment must be in the form of a check or money order and sent with ATF Form 5000.28T unless you are required to file by electronic fund transfer as described in paragraph (a) of this section.

(a) Electronic fund transfer. If you pay any other excise taxes collected by ATF by electronic fund transfer, then you must also send your payment for this floor stocks tax by an electronic fund transfer. ATF P 5000.10, Payment by Electronic Funds Transfer, specifies how to make an electronic fund transfer. You can get ATF P 5000.10 from any of the following sources:

- (1) ATF web site (www.atf.treas.gov);
 - (2) ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or
 - (3) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.
- (b) [Reserved]

Sec. 296.234 Tax return due dates.

Tax increase date	File tax return no later than:
January 1, 2000.....	March 31, 2000 \1\
January 1, 2002.....	April 1, 2002

\1\ Section 9302(j) of P.L. 105-33 states that the due date is April 1, 2000. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax for this period is due on March 31, 2000 since April 1, 2000, falls on a Saturday.

Sec. 296.235 Filing requirements for multiple locations.

You may file a consolidated return if all locations or places of business have the same employer identification number. You also have the option of filing a separate return for each place of business or location.

Sec. 296.236 Cigarettes in a warehouse.

(a) Cigarettes warehoused at one or more locations must be reported on the tax return representing the location where the cigarettes will be offered for sale.

(b) Cigarettes offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The cigarettes can be reported by a single location or apportioned among several locations.

Sec. 296.237 Controlled group members.

If you are a member of a controlled group, you must file if the combined liability with other members is more than \$500. If you have your own employer identification number, you must file a separate tax return. You may take the tax credit discussed in Sec. 296.223 if it is apportioned to you as a member of the controlled group.

Records

Sec. 296.241 Required records.

You must maintain:

- (a) Inventory records.
- (b) Tax computations.
- (c) Names, addresses and employer identification number of all controlled group members, if applicable.
- (d) Copy of tax return, if you filed one.
- (e) List of locations and warehouses covered by the tax return.
- (f) Any approved alternate method or procedure under 296.263.

Sec. 296.242 Period for maintaining records.

An appropriate ATF officer may require, in writing, that you keep records and any tax returns for an additional period of not more than 3 years. Keep your records in accordance with time frames shown in the table to this section.

If you have:	Maintain your records for at least:
Taken an inventory but are not required to file a tax return.	3 years from the tax increase date.
Filed a tax return on or before the due date of the return.	3 years from the due date of the tax return, as specified in Sec. 296.234.
Filed a tax return after the due date of the tax return.	3 years from the date of filing the tax return.

Sec. 296.243 Cigarettes at multiple locations.

You must maintain a list of each place where you hold cigarettes subject to the floor stocks tax. This list must include:

- (a) Address.
- (b) Name of the proprietor (if different).
- (c) The employer identification number (if different).
- (d) Quantity and classification of all cigarettes held at each location.

Sec. 296.244 Where records must be maintained.

Keep your inventory records at your principal place of business. All records must be made available to an appropriate ATF officer upon demand.

Sec. 296.245 Errors in records.

If your inventory records or tax computation records contain an error that resulted in an overpayment of tax, you can file a claim for refund. If your inventory or tax computation records contain an error that resulted in an underpayment of tax, you must file an additional tax return on which you show and pay the additional tax, interest and any applicable penalties.

Claims

Sec. 296.251 Before filing a claim.

Before you can file a claim for refund, you must have paid your floor stocks tax on ATF F 5200.28T and subsequently determined that you overpaid the tax.

Sec. 296.252 When to file a claim for errors on return.

You must file the claim within 3 years from the due date of filing the tax return or 2 years from the time the tax was paid, whichever is later.

Sec. 296.253 How to file a claim for errors on return.

Your claim must be filed on ATF Form 2635 (5620.8). The claim must include detailed and sufficient evidence to support why you believe the tax was overpaid. The claim and supporting documentation must be mailed or delivered to the address shown on the form.

(Approved by the Office of Management and Budget under control number 1512-0554)

Sec. 296.254 Destruction of cigarettes by a Presidentially-declared major disaster.

After you have paid the floor stocks tax, you may file a claim for refund of tax on cigarettes lost, rendered unmarketable, or condemned because of a Presidentially-declared major disaster. Refer to subpart C of this part for the time, evidence and procedures for filing a claim.

Sec. 296.255 Additional reasons for filing a claim.

(a) Manufacturer. 27 CFR part 270, subparts I and K state the times, reasons and procedures for filing a claim for refund.

(b) Export warehouse proprietor. 27 CFR part 290, subpart G, states the time, evidence and procedures for filing a claim for refund.

(c) Exported taxpaid. If cigarettes are shipped from the United States, you may file a claim for drawback of taxes under subpart K of 27 CFR part 290.

(d) Importer. An importer may follow the procedures for filing a claim as described in 27 CFR part 275, subpart I.

Alternate Methods or Procedures

Sec. 296.261 Purpose of an alternate method or procedure.

An alternate method or procedure is a different way of performing a requirement than is provided in this subpart of regulations. You would only make a request if you wanted to perform a requirement in a different way than is provided in this subpart.

Sec. 296.262 How to apply for approval.

You must apply in writing to the National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263. You must describe the alternate method or procedure and reasons you wish to use it. You cannot use the alternate method until you receive written approval from ATF.

(Approved by the Office of Management and Budget under control number 1512-0554)

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Sec. 296.263 Conditions for approval.

The alternate method or procedure may be approved if it meets all of the following conditions:

- (a) There is good cause for its use.
- (b) It is consistent with the purpose and effect intended by the prescribed method or procedure.
- (c) It affords equivalent security to the revenue.
- (d) It is not contrary to any provision of law.
- (e) It will not result in an increase in cost to the Government.
- (f) It will not hinder the effective administration of this subpart such as delaying timely payment of taxes.
- (g) It is not a method or procedure that relates to the payment or collection of tax.

Sec. 296.264 Withdrawal of an alternate method or procedure.

The approval will be withdrawn if revenue is jeopardized or administration of this subpart is hindered. ATF will give you a written notice of the withdrawal.

ATF Authorities

Sec. 296.270 Delegations of the Director.

The regulatory authorities of the Director contained in this subpart are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.14, Delegation Order--Delegation of the Director's Authorities in Subpart I of 27 CFR part 296. ATF delegation orders, such as ATF O 1130.14, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150-5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

Sec. 296.271 Entry, examination and testimony.

Appropriate ATF officers, in performing official duties, may enter any premises to examine cigarettes subject to floor stocks tax. They may enter the premises during the day or may also enter at night if the premises are open. Appropriate ATF officers may audit and examine all cigarettes, inventory records, books, papers, or other resource data for the purpose of ascertaining, determining or collecting floor stocks tax. They may take testimony (under oath) of any person when inquiring as to proper payment of floor stocks taxes.

Sec. 296.272 Issuance of summons.

Appropriate ATF officers can issue summonses when there is no Justice Department referral under the authority stated in 27 CFR 70.22. The summons will state a place and time for such items or person to appear. ATF will issue a summons to require:

(a) Any books of account or other data pertaining to liability of floor stocks tax.

(b) Any person liable for the floor stocks tax or having possession of books of account or other data.

(c) Any other appropriate person in connection with the books or tax liability.

Sec. 296.273 Refusing entry or examination.

If you or another person in charge of the premises refuses to admit any appropriate ATF officer or prevents any appropriate ATF officer from examining the records or cigarettes, you may be liable for the penalties described in 26 U.S.C. 7342 and 7212, respectively.

Sec. 296.274 Penalties for failure to comply.

If you fail to follow these regulations, ATF may apply applicable civil and criminal penalties under the Internal Revenue Code of 1986. For example, failure to file and failure to pay penalties may be assessed against you if you do not timely file your tax return or timely pay the taxes due. In addition, interest under 26 U.S.C. 6621 accrues for any underpayment of tax and on all assessed penalties until paid.

Signed: October 13, 1999.

John W. Magaw,
Director.

Approved: October 27, 1999.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).
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